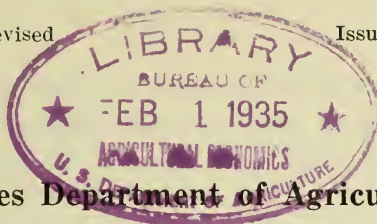


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United States Department of Agriculture

BUREAU OF AGRICULTURAL ECONOMICS

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 121, REVISED

REVISED RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE FOR CARRYING OUT THE PROVISIONS OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930 (46 STAT. 531) AS AMENDED APRIL 13, 1934 (48 STAT. 584)

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UNITED STATES DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY.

By virtue of the authority vested in the Secretary of Agriculture by an "Act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce", approved June 10, 1930 (46 Stat. 531), as amended April 13, 1934 (Public, No. 159, 73d Cong.), I, M. L. WILSON, Acting Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following rules and regulations to supersede all previous regulations for like purposes and to be in force and effect until amended¹ or superseded by rules and regulations hereafter made by the Secretary of Agriculture under said act.



In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 4th day of August 1934.

M. L. Wilson

Acting Secretary of Agriculture.

RULES AND REGULATIONS

Regulation 1.—Definitions

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

SEC. 2. The following definitions are included in the act and shall have the same meaning in these regulations.

Paragraph 1. *Person*.—This term includes individuals, partnerships, corporations, and associations.

¹Amended by the Secretary of Agriculture, effective Oct. 1, 1934, by changing regulation 5, sec. 1, par. 8; regulation 5, sec. 2, par. 5; regulation 8, sec. 1, par. 7; regulation 9, sec. 1.

Par. 2. Secretary.—This term means the Secretary of Agriculture of the United States.

Par. 3. In commerce.—This term means interstate or foreign commerce as defined in section 1, paragraphs 3 and 8 of the act.

Par. 4. Perishable agricultural commodity.—This term means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character.

Par. 5. Commission merchant.—This term means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale on commission or for or on behalf of another.

Par. 6. Dealer.—This term means any person engaged in the business of buying and/or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (a) no producer shall be required to obtain a license as a dealer if selling only commodities of his own raising, (b) no person buying in carloads solely for sale at retail shall be considered a dealer until his purchases of such produce in any 1 calendar year are in excess of 20 carloads, including wholesale or jobbing quantities as defined herein, and (c) no person buying such produce solely for canning and/or processing within the State where grown shall be considered a dealer. Any producer, retailer, or canner described in exceptions (a), (b), or (c) may elect to secure a license and in such case shall be considered a dealer.

Par. 7. Broker.—This term means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively.

SEC. 3. The following additional definitions shall apply to terms used in these regulations.

Paragraph 1. The Perishable Agricultural Commodities Act, 1930, or the act.—This term means an act of Congress entitled, "An act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce," approved June 10, 1930 (46 Stat. 531), as amended April 13, 1934 (Public—No. 159—73d Cong.).

Par. 2. Chief of Bureau.—This term means the Chief or Acting Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

Par. 3. Licensee.—This term means any person who holds an unrevoked and valid unsuspended license issued under the act.

Par. 4. Branch.—This term means any subdivision, whether permanent or seasonal, owned and conducted in the name of a firm licensed under this act, whose manager or other person responsible for the conduct of the branch has discretionary authority in performing the usual functions of a commission merchant, dealer, or broker.

Par. 5. Inspector.—This term shall be deemed to mean any person authorized or licensed by the Secretary to inspect any perishable agricultural commodity.

Par. 6. Produce.—This term means any perishable agricultural commodity, as defined in section 2 of this regulation.

Par. 7. Fresh fruits and fresh vegetables.—This term includes all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice and whether or not held in common or cold storage, but does not include those which have been dried or manufactured into articles of food of a different character.

Par. 8. Wholesale or jobbing quantities.—This term as used in section 1, paragraph 6, of the act means quantities of produce of not less than 1 ton in weight shipped or received by rail, truck, boat, or any other means of transportation.

Par. 9. Truly and correctly to account.—This term shall be deemed to include (a) the prompt rendering of a true and correct itemized statement of the sale or other disposition of any consignment of perishable agricultural commodities in commerce with full payment of the gross amount for which such produce is sold, less the proper, usual, or agreed selling charges and all other expenses necessarily and actually incurred or agreed to in the handling thereof; (b) the prompt payment of deficits or other adjustments resulting from the handling of produce on consignment or for or on behalf of another in commerce; (c) the prompt payment of brokerage duly earned in connection with produce in commerce; and (d) the prompt payment of the purchase price or other amount due either the seller or the buyer in accordance with

the terms of the agreement between the parties concerned in settlement for produce purchased or sold in commerce.

Par. 10. Account promptly.—This term means that full accounting and payment of the net proceeds in cash or its equivalent shall be effected within 10 days after the day on which the final sale shall have been made of any lot of produce sold on commission or otherwise for or on behalf of another, unless otherwise provided by agreement between the parties: *Provided*, That in the case of a sale on commission at shipping point or of a shipment diverted while in transit or diverted from one terminal market to another, the 10-day period shall be computed from the time of arrival of the shipment at destination. This term also means that the payment of the purchase price or other amount due either the seller or the buyer of produce shall be made in accordance with the terms of the contract of purchase and sale, or, if time of payment is not specified, shall be made within a reasonable time after delivery and acceptance of the produce purchased and sold, and that brokerage charges shall be paid within a reasonable time after having been earned.

Par. 11. Reject.—This term shall be deemed to mean the act of any person who has purchased or offered to handle on consignment or otherwise, for or on behalf of another, produce in commerce (1) of refusing or failing to accept such produce within a reasonable time, or (2) of advising the seller or shipper or his agent that he will not receive such produce in accordance with his contract or offer, or (3) of indicating an intention not to accept such produce through an act or failure to act either of which is inconsistent with the contract.

Par. 12. Reasonable time.—This term as used in paragraph 11 above shall be deemed to mean not to exceed 24 hours after receipt of notice of arrival of the produce, unless the dealer applies for Federal inspection of said produce within this period, or unless at the time of the receipt by the purchaser of notice of arrival of the produce the temperature is sufficiently below freezing to render a complete Federal inspection of the produce dangerous thereto, commodity and existing weather considered. Under such circumstances a preliminary inspection for the sole purpose of determining whether transit freezing injury is present in the load shall be made or caused to be made as soon as possible after the receipt of such notice of arrival, and the further inspection of the produce for the purpose of determining whether the same meets the requirement of the contract of purchase and sale may be deferred until such time as temperature and weather conditions will permit such inspection to be safely made. The meaning of the terms "as soon as possible" and "safely made" shall be determined upon a consideration of all the facts and circumstances shown to exist in each case.

Par. 13. Acceptance.—This term shall be deemed to mean that unless the dealer notifies the seller within a reasonable time as defined in paragraph 12 above that he rejects the produce, or unless the dealer applies for Federal inspection of said produce within a reasonable time (24 hours) and takes action to notify the seller of his rejection of said produce within an hour after he has received either a verbal or a written report of the result of such inspection, or unless, in the case of freezing temperature as provided in paragraph 12, he shall have notified the seller, within 24 hours after receipt of notice of arrival of the produce, as to the weather conditions which prevent thorough inspection, he will be deemed to have accepted the produce, subject to his right to claim damages in case such produce failed to meet the terms of the contract.

Regulation 2.—Administration

SECTION 1. The Chief or Acting Chief of the Bureau shall perform for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of the act and of these regulations.

Regulation 3.—Licenses

SECTION 1. *Paragraph 1.* No person shall at any time carry on the business of a commission merchant, dealer, or broker without a license issued by the Secretary and countersigned by the Chief of Bureau which is valid and effective at such time.

Par. 2. Any person who maintains one or more branches, as defined in regulation 1, has the option of operating all branches under the license of the parent organization or of taking out a separate license for each branch.

SEC. 2. Any person who desires to secure a license to carry on such business shall make application therefor on a form to be obtained from the Chief of Bureau or his representatives. Applications submitted on behalf of branches must be signed by an authorized official of the parent organization.

SEC. 3. Each application shall be accompanied by the license fee of ten dollars (\$10) in the form of a money order, bank draft, cashier's check, or certified check, made payable to the Department of Agriculture, and the application and fee shall be forwarded to the Chief of Bureau of Agricultural Economics, Department of Agriculture, Washington, D. C. Thereafter the annual fee of ten dollars (\$10) required by the act shall be remitted in the same manner.

SEC. 4. Copies of licenses may be issued on request upon the payment of a fee of \$1 for each copy. Each copy shall contain the word "COPY" in conspicuous letters on its face and be certified by the Chief of Bureau as a true copy of the original.

SEC. 5. Unless the annual fee is paid within 30 days after notice has been mailed by the Chief of Bureau that payment is due, the license shall be returned to the Chief of Bureau since it is automatically terminated by the act for failure to pay the fee.

SEC. 6. Upon receipt of an application for a license the Secretary will, if the applicant is found to be eligible, issue a license certifying that the licensee is authorized to engage in the business of a commission merchant and/or dealer and/or broker. The fee so tendered shall be deposited in a special deposit account until the license is finally issued or denied. If license is denied, the fee shall be returned to the applicant, but if issued the fee shall be deposited as a miscellaneous receipt and will not thereafter be subject to refund. Each license shall bear a serial number, the signature of the Secretary, be issued under the seal of the United States Department of Agriculture, and be countersigned by the Chief of the Bureau. The serial number may appear on the stationery of the licensee.

SEC. 7. The licensee shall advise the Chief of Bureau promptly of any change of address and/or any change in the officers, managers of licensed branches, or ownership of the business or of a discontinuance of the business under the name in which licensed. In case of a change of ownership of a business or of the name of a corporation, or of the death, withdrawal, or addition of a partner, a new license is required.

SEC. 8. Any person engaging in or carrying on any of the various classes of business described in the act without a valid license will be reported to the Attorney General with recommendation for the institution of suit for the recovery of the penalty fixed by the act of not more than \$500 for each offense and not more than \$25 for each day it continued.

Regulation 4.—Accounts and Records

SECTION 1. Every commission merchant, dealer, and broker shall preserve for a period of 2 years the accounts, records, and memoranda required by the act fully and correctly disclosing all transactions involved in his business, including the true ownership of such business by stockholding or otherwise.

SEC. 2. Each licensee shall during ordinary business hours permit any duly authorized representative of the United States Department of Agriculture to enter his place of business and inspect any and all such records pertaining to such business as may be necessary to ascertain the facts material to the investigation of any complaint under the act. Any necessary facilities for such inspection shall be extended to such representative by the licensee, his agents, and employees.

SEC. 3. No representative of the United States Department of Agriculture shall, without the consent of the licensee, divulge or make known in any manner, except to other representatives of the United States Department of Agriculture who may be required to have such knowledge in the regular course of their official duties, or except insofar as he may be directed by the Secretary, the Chief of Bureau, or by a court of competent jurisdiction, any facts or information regarding the business of such licensee which may come to the knowledge of such representative through an examination or inspection of the business or accounts of the licensee, or unless the same is relevant and material to the issue in any hearing authorized by the act.

Regulation 5.—Procedure as to Complaints, Hearings, and Orders

COMPLAINTS, INVESTIGATIONS, AND ANSWERS

SECTION 1. *Paragraph 1.* Complaint charging violation of any provision of section 2 or section 9 of the act may be filed with the Chief of Bureau by any interested person, including any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture. If such complaint is to be made the basis of a claim for damages, the complaint must be filed within 9 months after the cause of action accrues. The same facts may also be made the basis of a disciplinary complaint against a licensee complained of at any time within 2 years after the violation of the law occurred: *Provided, however,* That the 2-year limitation herein prescribed shall not apply to flagrant and repeated violations of the act.

Par. 2. Complaints under the act may be filed informally by telegraph, by letter, or by a preliminary statement of facts setting forth the essential details of the transaction complained of. So far as practicable every such complaint should state:

- (a) The name and address of each party and of his agent, if any, representing him in the transaction involved;
- (b) Kind of produce shipped;
- (c) Date of shipment;
- (d) Car initial and number, if car lot;
- (e) Shipping and destination points;
- (f) Quantity shipped;
- (g) Quality or grade of each kind of produce;
- (h) If a sale, state: Sale price; amount actually received;
- (i) If a consignment, state: Reported proceeds; gross; net; date;
- (j) Amount of damages claimed;
- (k) Statement of material facts, including terms of contract.

Par. 3. The complaint must be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

Par. 4. In complaints involving damages in connection with the sale or purchase of produce, the complainant will be expected to furnish information tending to show the existence of a contract.

Par. 5. Upon receipt of all of the information and supporting evidence submitted by the complainant, the Chief of Bureau shall make such investigation as in his opinion is justified by the facts. If such investigation discloses that no violation of the act has occurred, the matter will be dropped and the complainant so advised.

Par. 6. If the statements in the informal complaint seem to warrant such action, the Chief of Bureau shall call upon the party complained against to state his side of the controversy in an effort to effect an amicable adjustment of the claim. Should such adjustment not be made and the information secured by correspondence or investigation indicate the probability of a violation of the act, further proceedings will be based upon formal complaint, either for damages filed by the aggrieved party or for disciplinary action filed by any person authorized in section 6 (b) of the act. In the latter case, the Chief of Bureau may proceed with the handling of the complaint without further action by the person originally filing the complaint, except as he may be subpoenaed as a witness in the case of his deposition taken without expense to him.

Par. 7. Formal disciplinary complaints, that is, complaints which do not involve claims for damages, shall be filed in such form as may be prescribed by the Chief of Bureau, shall set forth the grounds for alleging a violation of the act, and shall be supported by all documents available relating to the allegations contained in the complaint.

Par. 8. If the procedure provided in paragraph 6 of this section fails to effect an amicable adjustment and indicates the probability of a violation of the act, the complainant shall be required to submit a formal complaint to the Chief of Bureau setting forth the information and accompanied by the papers indicated in paragraphs 2 and 3 of this section, and stating the amount of damages claimed, with the basis therefor and the method of determination. Two additional copies shall be furnished for filing and service on the respond-

ent. If there is more than one respondent, a further copy shall be furnished for each of the additional respondents.

Par. 9. If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or in double the amount of the claim with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including attorney's fees of respondent in case of failure to sustain the case.

Par. 10. If the formal complaint, either disciplinary or involving claim for damages, appears to be in proper form, it shall be transmitted by the Chief of Bureau, together with the Bureau's entire file relating to the case, to the Solicitor of the Department, who, if he determines that the complaint is in proper form, shall serve a copy thereof upon the party complained against, who shall be referred to as the respondent.

Par. 11. In making service of the complaint, respondent will be called upon to file an answer thereto, in triplicate, within 10 days from date of such service.

HEARINGS

SEC. 2. Paragraph 1. Upon failure or refusal of the respondent to explain satisfactorily in writing or to make such reparation as is satisfactory to the complainant, the Solicitor of the Department may order a public hearing upon the matter before an examiner for the Department, and due notice of such public hearing shall be given by the Solicitor to the person concerned, which hearing shall be held in any place in which the party complained of is in business.

Par. 2. In such a public hearing, the complainant and the respondent may appear personally or by counsel. In such proceedings, the burden of proof is upon the complainant. Representatives of the Department who may have knowledge of any fact in the case, and any other persons having information, accounts, records, or memoranda relating to the subject of the complaint, may be subpoenaed to testify or furnish evidence at such hearing by deposition.

Par. 3. In a hearing on any complaint, the Secretary or any officer or employee designated by him may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under the act.

Par. 4. Amendment of any pleading will be allowed by the Solicitor of the Department or by the examiner at the hearing if such amendment is not prejudicial to the other party and is deemed proper by the Solicitor or such examiner; otherwise it will be refused.

Par. 5. Where the amount of damages claimed does not exceed \$500 a formal hearing will not be held unless deemed necessary or desirable by the Chief of Bureau or by the Solicitor or granted upon application of complainant or respondent setting forth the peculiar circumstances making such hearing necessary for proper presentation of his case. Proof in support of the complaint and the answer may be supplied in the form of depositions or verified statements of fact or both as provided for in the succeeding paragraph unless waived in accordance with its provisions.

Par. 6. Where the amount of damages claimed in a complaint is greater than \$500 but does not exceed the sum of \$2,000, both parties may, by the filing of a waiver of hearing, consent to the submission of the case to the Secretary upon sworn statements of facts, depositions, supporting exhibits, and other records comprising the file in the case made by the Bureau in connection with its preliminary investigation of the complaint, in lieu of a record made at a public hearing provided for in the preceding paragraphs 1 to 3, inclusive. Where such waiver is filed, complainant may, within 15 days after receipt of notice that both parties have waived hearing, file with the Department an original and two copies of its verified statement of facts in support of the allegations of the complaint. The Department will make service thereof upon respondent, who will then have 15 days within which to file, in like manner, an original and two copies of its answering statement of facts.

Complainant will then have 5 days within which to file a reply to respondent's answering statement. If either party feels that his explanation already made is sufficient and desires to waive the making of a further statement, he shall promptly so advise the Department. Upon full submission of the case, as herein provided, the Secretary will then consider such records and enter findings of facts and make an appropriate order in the same manner and which shall have the same force and effect as if entered upon a record made at a public hearing.

Par. 7. In any case, the Chief of Bureau or the Solicitor may call for the submission of additional evidence or further investigation of the facts at any time prior to decision by the Secretary if such additional information is deemed necessary to a fair determination of the matter.

DEPOSITIONS

Sec. 3. Paragraph 1. The testimony of any witness who is or will be unable to appear in person at a hearing may be taken in deposition form. Either party, complainant or respondent, may apply to the Department in writing for an appropriate order, in which application the case should be identified by—

- (1) The name and docket number;
- (2) The name of each witness whose deposition is to be taken;
- (3) The name and address of a notary public or other person who is authorized to administer oaths before whom such witness or witnesses may testify;
- (4) An accurate description of the place where such deposition or depositions will be taken, such as street, office building, and room therein.

Par. 2. Such witness or witnesses and the notary public or other person designated to take a deposition, unless he be an employee of the Department, shall severally be entitled to the fees authorized by section 13 (c) of the act, which fees shall be paid by the party at whose instance the deposition was taken.

FINAL ORDER

Sec. 4. Paragraph 1. If, after hearing has been held or waived in complaints where the damages claimed exceed \$500 and on complaints where damages do not exceed \$500 not requiring hearings as provided by section 6 (c) of the act, the Secretary determines that the respondent has violated any provisions of paragraphs 1, 2, 3, or 4 of section 2 of the act he will, unless reparation has already been made to complainant, determine the amount of damage, if any, to which the complainant is entitled as the result of such violation and will make an order directing respondent to pay to complainant such amount on or before the date fixed in the order. He will also issue such disciplinary order as the facts warrant.

Par. 2. Any order of the Secretary other than for the payment of money shall be effective not less than 10 days from and after the date the order is signed.

Par. 3. Any order for reparation shall state the period which shall be allowed for the payment of such reparation.

Par. 4. If either party appeals from a reparation order entered by the Secretary without formal hearing as provided in section 6 (d) of the act, the suit shall be filed in the District Court of the United States for the district in which the respondent is located.

PETITIONS FOR REHEARING

Sec. 5. Paragraph 1. Application for further hearing in a proceeding before final submission must be by petition within 30 days from the date of hearing or for reopening a proceeding after final submission must be by petition within 30 days from the date of such final submission. Such petition shall state specifically the grounds relied upon and the petitioner must show that service of a copy thereof has been made upon the adverse party. Such adverse party may have 20 days in which to serve and file objections to such petition.

Par. 2. If the application be for further hearing before final submission or for reopening a proceeding to take further evidence, the nature and purpose of the evidence to be adduced must be briefly stated and it must appear not to be merely cumulative.

Par. 3. Application for rehearing or reargument after decision must be by petition received by the Chief of Bureau within 20 days from the service of the

order. The petition should state one or more of the following grounds upon which such petition is based:

- (1) That the order is contrary to law or evidence;
- (2) That the damages awarded are excessive or inadequate;
- (3) That new evidence has been discovered which, if received, should warrant a modification of the order complained of;
- (4) That the petitioner was taken by surprise at the introduction of evidence;
- (5) Any other material errors such as will show a substantial miscarriage of justice.

The petition shall be filed with the Secretary and if in the opinion of the Secretary the facts warrant such action he may extend the effective date of the order and serve a copy thereof upon the adverse party. Such adverse party may have 15 days in which to file objections to such petition.

Regulation 6.—Suspension and Revocation

SECTION 1. Whenever, after investigation and opportunity for hearing upon a formal complaint filed against a licensee, it shall be determined that such licensee has violated any of the provisions of section 2 of the act, the Secretary may publish the facts and circumstances of such violation and/or suspend the license of such offender for a period not to exceed 90 days, except that, if the violation is a flagrant or repeated violation of such provisions, or if it be found that the licensee has committed one of the offenses set forth in section 4 (c) or (e) of the act, the Secretary may revoke the license of the offender.

SEC. 2. Whenever, after investigation and opportunity for hearing upon a complaint filed against a licensee, it shall be determined that such licensee has failed or refused to keep such records as are prescribed in section 9 of the act, the facts and circumstances may be published and the license of the offender suspended for a period not to exceed 90 days by order of the Secretary.

SEC. 3. Upon the failure or refusal of any licensee to permit the inspection of accounts, records, and memoranda material to a complaint, the facts and circumstances incident thereto may be published and the license of the offender suspended until such permission is given.

SEC. 4. Upon failure of a licensee against whom a reparation order has been issued to show to the satisfaction of the Chief of the Bureau within 5 days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as authorized by section 7 (c) of the act or has made payment in full or has filed a petition for rehearing or reargument as provided in section 5 of regulation 5, the Chief of the Bureau shall notify the licensee that his license is suspended automatically at the end of the 5-day period until such time as he has shown to the satisfaction of the Chief of the Bureau that he has paid the amount specified with interest.

SEC. 5. Immediately upon the issuance of an order of suspension or revocation the Chief of the Bureau will cause general publicity to be given to the action in order that those doing business with the person whose license shall have been suspended or revoked may take due notice thereof.

SEC. 6. *Paragraph 1.* Whenever the Secretary shall order the suspension or revocation of a license, the person against whom such order is directed shall be served by the Chief of Bureau with a copy of the order and be notified of the effective date thereof.

Par. 2. Except in the case of any license automatically suspended by the act, a reasonable time, not less than 10 days between the date of issuance and the date upon which the order of suspension or revocation becomes effective, shall be stated in the order within which the licensee may make all necessary arrangements with some other person, whose license shall not have been either suspended or revoked, to safeguard the interests of consignors or other innocent parties whose property or business may be affected by such suspension of revocation and to terminate the affairs and business of such licensee relating to the handling of perishable agricultural commodities in commerce.

Par. 3. After the revocation of his license or during the effective period of any suspension thereof the licensee shall not either directly or indirectly through any agent, employee or otherwise, carry on the business of a commission merchant, broker, or dealer until his status as a licensee has been restored.

Par. 4. The suspension or revocation of a license shall not prevent the licensee from collecting amounts due on his contracts or in connection with transactions in which he acted as an agent and remitting the same promptly to his principals and obligees.

Regulation 7.—Service of Complaints and Orders

SECTION 1. Service of any complaint or order required by the act or prescribed by these regulations shall be deemed sufficient if made by registered mail or personally upon the licensee. Service so made upon any member of a partnership or any officer of an association or corporation shall be sufficient. Personal service includes leaving notice at the last address furnished the Chief of the Bureau in compliance with these regulations or at the last and usual place of abode of any member of a partnership or officer of an association or corporation.

Regulation 8.—Trade Terms and Definitions

SECTION 1. Unless otherwise defined, the following terms when included in a contract or communication involved in any investigation made or hearing held pursuant to this act shall be construed, respectively, to mean:

Paragraph 1. The term "Today's shipment" shall mean that the goods referred to shall be under billing by the transportation company the day the order is given in time to be picked up by a train scheduled to move that day's loadings from the shipping point provided that such train shall leave the first pick-up point on its schedule before midnight of the day the order is given.

Par. 2. The term "Tomorrow's shipment" or "Immediate shipment" shall be deemed to mean that the shipment referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 24 hours later than allowed under "Today's shipment."

Par. 3. The term "Quick shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 48 hours later than that allowed under "Today's shipment."

Par. 4. The term "Prompt shipment" shall be deemed to mean that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 72 hours later than allowed under "Today's shipment."

Par. 5. The term "Shipment first part of week" or "Early part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Monday or Tuesday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

Par. 6. The term "Shipment middle of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Wednesday or Thursday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

Par. 7. The term "Last of week" or "Latter part of week" shall be deemed to mean that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave on Friday or Saturday of the week specified, subject to the same provisions with reference to cars picked up after midnight of the day specified as apply to "Today's shipment."

Par. 8. The provisions "Shipment as soon as possible" or "As soon as cars can be secured" shall be deemed to mean that the shipper is uncertain as to when the shipment can be made but expects to make it within a reasonable time and will make it as soon as possible. But in any case where these words are so used the buyer shall, at any time after 12 days from the date the order is given, have the right to cancel the order or contract of sale provided notice of his decision so to cancel shall have been received by the shipper before shipment has been made.

Par. 9. The term "f. o. b." (for example, "f. o. b. Laredo, Tex.", or even "f. o. b. California") shall be deemed to mean that the commodity quoted or sold is to be placed free on board the car or other agency of through land transportation at shipping point, in suitable shipping condition (see definitions of "suitable shipping condition", sec. 2, pars. 10 and 11 of this regulation)

and that the buyer assumed all risks of damage and delay in transit not caused by the shipper, irrespective of how the shipment is billed. The buyer has the right of inspection at destination before the goods are paid for, but only for the purpose of determining that the produce shipped complied with the terms of the contract or order at time of shipment subject to the provision covering suitable shipping condition. This right of inspection does not convey or imply any right of rejection by the buyer because of any loss, damage, deterioration, or change which has occurred in transit.

Par. 10. "Suitable shipping condition" in relation to direct shipments shall be deemed to mean that the commodity, at time of billing, shall be in a condition which, when shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the destination specified in contract of sale.

Par. 11. "Suitable shipping condition" in connection with reconsigned or rolling cars shall be deemed to mean that the commodity, at time of sale, shall meet the requirements of the definition of this phrase provided for application to direct shipments in paragraph 10 of this regulation.

Par. 12. The term "F. O. B. acceptance" shall be deemed to mean the same as f. o. b. except that the buyer assumes full responsibility for the goods at shipping point and has no right of rejection on arrival, nor has he any recourse against the shipper because of any change in condition of the goods in transit, unless the goods when shipped were not in suitable shipping condition. (See definitions, sec. 1, pars. 10 and 11 of this regulation.) The buyer's remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment.

Par. 13. The term "F. O. B. Acceptance final" shall be deemed to mean that the buyer accepts the commodity f. o. b. cars at shipping point without recourse.

Par. 14. The term "F. O. B. steamer" shall be deemed to mean that the commodity bought or sold is to be placed free on board the steamer at shipping point in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

Par. 15. The term "F. A. S. steamer" shall be deemed to mean that the commodity bought or sold is to be delivered free alongside the steamer in accordance with the terms of the contract and that the buyer assumes all responsibility and risk of damage thereafter.

Par. 16. The term "Delivered" or "Delivered sale" shall be deemed to mean that the commodity quoted or sold is to be delivered by the seller on board car, or on dock if delivered by boat, at the market in which the buyer is located, or at such other market as agreed upon, free of any and all charges for transportation or protective service. The seller assumes all risks of loss and damage in transit not caused by the buyer. For example, a sale of "U. S. No. 1 potatoes delivered Chicago" means that the potatoes when tendered for delivery at Chicago shall meet all the requirements of the U. S. No. 1 grade as to quality and condition.

Par. 17. The term "In transit", "Roller", or "Rolling car" shall be deemed to mean that the commodity referred to has been in possession of the transportation company and under movement from shipping point prior to the day on which the quotation is made, and that the car is moving over a route in line of haul between the point of origin and the market in which delivery is to be made, and has been so moving since date of shipment without any delay attributable to the shipper or his agent. If a roller, or rolling car, or car in transit is sold f. o. b. shipping point, the buyer will be deemed to assume only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with car rental and refrigeration and heater charges, if any; provided that the kind and extent of the protective service required by the shipper's instructions to the carriers are specified in the contract. But the buyer shall not be deemed to have assumed any demurrage, storage, detention, icing, or heater charges, or diversion or reconsignment charges, that would not have accrued had the car been originally shipped direct to the destination named in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

Par. 18. The term "Tramp car" or "Tramp car sale" shall mean that the commodity has left the shipping point under a bill of lading issued prior to the day on which the quotation is made and has moved or is moving over a route out of line of haul with the market in which it is to be delivered or in which it is

being offered or quoted, or which has been moving over a route in line of haul between the point of origin and the market in which it is to be delivered or in which it is being offered or quoted, but has been delayed in transit by the shipper, or has been held by the transportation company at diversion or other points en route awaiting instructions from the shipper and by such holding or delay has missed scheduled movement between point of shipment and the market in which it is to be delivered as the result of the transaction in question. But if sold f. o. b. shipping point, the buyer assumes only the lowest authorized all-rail freight charges applicable between the point of origin and the destination stated in the contract of purchase, together with the car rental and refrigeration and heater charges, if any; provided, that the kind and extent of the protective service required by shipper's instructions to the carriers are specified in the contract. But the buyer shall not assume any demurrage, storage, detention, icing, or heater charges, or diversion or reconsignment charges, that would not have accrued had the car been originally shipped direct to the destination provided in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification has been duly acknowledged by the carrier, the contract of sale shall be deemed to have become null and void unless otherwise specifically provided.

Par. 19. The term "Rolling acceptance" shall be deemed to mean that the buyer accepts at time of purchase a commodity which is in the possession of the transportation company and under movement from shipping point, under the terms and conditions described in paragraphs 17 and 18 of this regulation, except that the buyer assumes full responsibility for transportation of the goods from time of purchase, has no recourse against the seller because of any change in condition after time of purchase unless the goods when shipped were not in suitable shipping condition, and has no right of rejection on arrival. The buyer's remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment. By agreement between the parties, however, the purchase may be made subject to inspection at any specified point while the car is rolling or in transit and the point at which the buyer will assume transportation charges may be specified without affecting the time of acceptance of the commodity.

Par. 20. The words or term "Track sale" or "Sale on track" shall be deemed to mean that when a commodity is sold on track after arrival at destination, the buyer shall be considered to have waived any right to reject the commodity so purchased upon receipt by him or his duly authorized representative, from the seller or his duly authorized representative, of the bill of lading, delivery order, or other document enabling him to obtain the goods from the carrier.

The foregoing shall not be construed as depriving the buyer of a right to reparation when the unloading of the car shall demonstrate that a part of the lading which was not accessible to inspection was of a quality or condition much inferior to that portion which was accessible to inspection; but notice of intention to file claim for reparation must be given seller within 24 hours after receipt by buyer of delivery order or bill of lading.

If the seller gives the date of arrival when quoting price, the buyer shall assume all charges that accrue on the shipment from the date of its arrival in the absence of any written memorandum of sale to the contrary. If the seller fails to furnish the date of arrival when quoting price, in the absence of any written memorandum of sale which includes the date of arrival or specific written statement as to who shall assume such charges as have accrued after arrival, the buyer may assume that the shipment arrived at point of sale on the day and date upon which the purchase was made, and shall be liable only for such charges as would properly attach to a shipment arriving on date it was purchased.

Par. 21. The abbreviations "C. A. F.", "C. A. C.", and "C. I. F.", shall be deemed to mean "cost and freight," "cost and charges," and "cost insurance and freight", respectively. When a sale is made c. a. f. it shall be deemed to mean the same as an f. o. b. sale except that the selling price includes the correct freight charges to destination. C. a. c. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes the correct freight and refrigeration or heater charges to destination. C. i. f. sales shall be deemed to be the same as f. o. b. sales except that the selling price includes insurance and the correct freight, refrigeration, or heater charges to destination.

Par. 22. A "carload" or "car lot" or "car" when referred to in offers, quotations, or sales in which the quantity is not more definitely specified, and in the absence of well-established trade custom or standard as to size of a

"carload" of the commodity in question, shall be deemed to mean not less than the lowest minimum quantity required by the carrier's tariff applicable to the movement, and not more than 10 percent in excess of such lowest minimum tariff requirements, except that where carrier's tariffs provide alternative rates and minima, the buyer shall state which tariff minimum must be observed, and in event of failure so to do, the shipper may exercise his discretion, in no case, however, exceeding the higher tariff minimum quantity, except only such variations therefrom as are permitted in this paragraph.

Par. 23. "Shipping-point inspection" shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the seller assumes the risk incident to incorrect certification.

Par. 24. "Shipping-point inspection final" or the words "Inspection final" following the name of the State or point as "California inspection final", shall be deemed to mean that the seller is required to obtain Federal or Federal-State certification, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality and/or condition specifications of the contract and that the buyer assumes the risk incident to incorrect certification.

Regulation 9.—Sundays and Holidays

SECTION 1. Sundays and legal holidays shall not be included in the computation of the 5-day period provided in section 7 (d) of the act, nor in connection with the periods defined in regulation 1, section 3, paragraphs 11, 12, and 13 and regulation 8, except section 1, paragraph 1, of said regulation 8.

SEC. 2. Sundays and legal holidays shall be included in the computation of time in all other periods mentioned in the act or in these regulations.

Regulation 10.—Inspection Service

SECTION 1. The rules and regulations of the Secretary governing the inspection and certification of fruits and vegetables as outlined in Service and Regulatory Announcements No. 93 (Agricultural Economics) and amendments thereto, and such additional amendments as may from time to time be promulgated, insofar as they apply to fresh fruits and fresh vegetables, shall govern the inspection of these products under this act and are hereby made a part of these regulations.

Regulation 11.—Copies of Records

SECTION 1. Copies of the application and other records pertaining to licensees under this act may be furnished under the conditions prescribed in paragraph 690 of the regulations of the Department of Agriculture, and, except where requested by Government officials, upon the payment of the following fees, which shall be deposited in the Treasury of the United States as miscellaneous receipts:

- (a) For each typewritten copy, 15 cents per page.
- (b) For each photographic or photostatic copy, 25 cents per page.
- (c) For each separate authentication, 25 cents.

TEXT OF THE ACT

(46 STAT. 531—71ST CONGRESS)

As amended by act effective April 13, 1934 (48 Stat. 584)

An Act to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia;

(4) The term "perishable agricultural commodity" means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character;

(5) The term "commission merchant" means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another;

(6) The term "dealer" means any person engaged in the business of buying or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect of sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a "dealer" in respect of any such commodity in any calendar year until his purchases of such commodity in carloads in such year are in excess of twenty; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a "dealer". As used in this paragraph, the term "in carloads" includes wholesale or jobbing quantities as defined for any such commodity by the Secretary;

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively;

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act.

UNFAIR CONDUCT

SEC. 2. It shall be unlawful in or in connection with any transaction in interstate or foreign commerce—

(1) For any commission merchant or broker to make any fraudulent charge in respect of any perishable agricultural commodity received in interstate or foreign commerce;

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer;

(3) For any commission merchant to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce;

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving or concerning the condition of the market for any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned in such commerce by such dealer; or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account promptly in respect of any such transaction in any such commodity to the person with whom such transaction is had;

(5) For any commission merchant, dealer, or broker, for a fraudulent purpose, to represent by word, act, or deed that any perishable agricultural commodity received in interstate or foreign commerce was produced in a State or in a country other than the State or the country in which such commodity was actually produced;

(6) For any commission merchant, dealer, or broker, for a fraudulent purpose, to remove, alter, or tamper with any card, stencil, stamp, tag, or other notice, placed upon any container or railroad car containing any perishable agricultural commodity, if such card, stencil, stamp, tag, or other notice contains a certificate under authority of any Federal or State inspector as to the grade or quality of the commodity contained in such container or railroad car or the State or country in which such commodity was produced.

LICENSES

SEC. 3. (a) After the expiration of six months after the approval of this Act no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subdivision shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.

(b) Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application. Upon the filing of the application, and annually thereafter, the applicant shall pay a fee of \$10.

SEC. 4. (a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided in subdivision (b) of this section, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, but said license shall automatically terminate unless the annual fee is paid within thirty days after notice has been mailed that payment is due.

(b) The Secretary shall refuse to issue a license to an applicant if he finds (1) that the applicant has previously, at any time within two years, been responsible in whole or in part for any violation of the provisions of section 2 for which a license of the applicant, or the license of any partnership, association, or corporation in which the applicant held any office, or, in the case of a partnership, had any share or interest, was revoked, or (2) if he finds after notice and hearing that at any time within two years said applicant was responsible in whole or in part for any flagrant or repeated violations of the provisions of section 2, or (3) in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant, had previously, at any time within two years, been responsible in whole or in part for any violations of the provisions of section 2 for which the license of such individual, or of any partnership, association, or corporation in which such person held any office, or, in the case of a partnership, had any share or interest, was revoked, or if he finds after notice and hearing that at any time within two years said applicant was responsible in whole or in part for any flagrant or repeated violations of the provisions of section 2, or (4) that the applicant, subject to his right of appeal under section 7 (b), has failed, except in case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office, or in case the applicant is a partnership, association, or corporation, that any individual holding any office, or in the case of a partnership, having any interest or share in the applicant, subject to his right of appeal under section 7 (b) has failed, except in the case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office. Notwithstanding the foregoing provisions, the Secretary, in the case of such applicant, may issue a license if the applicant furnishes a bond or other satisfactory assurance that his business will be conducted in accordance with the provisions of this Act, and that he will pay all reparation orders which may previously have been issued against him for violations, or which may be issued against him within two years following the date of the license, subject to his right of appeal under section 7 (b), but such license shall not be issued before the expiration of one year from the date of such revocation, or from the date of the Secretary's finding that applicant has been responsible, in whole or in part, for any flagrant or repeated violation of section 2.

(c) The Secretary may, after thirty days' notice and an opportunity for a hearing, revoke the license of any commission merchant, dealer, or broker, who after the date given in such notice continues to employ in any responsible position any individual whose license was revoked or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked within one year prior to the date of such notice. Employment of such individual by a licensee in any responsible position after one year following the revocation of any such license shall be conditioned upon the filing by the employing licensee of a bond or other satisfactory assurance that its business will be conducted in accordance with the provisions of this Act.

(d) The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending investigation, if the Secretary believes that the application contains any material false or misleading statement or involves misrepresentation, concealment or withholding of facts respecting any violation of the Act by any officer, agent, or employee. If, after investigation, the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for a hearing within sixty days from the date of the application to show cause why a license should not be refused. If after hearing the Secretary finds that the application contains a material false or misleading statement made by the applicant or by its representative on its behalf or involves a misrepresentation, concealment or withholding of facts respecting any violation of the Act by any officer, agent, or employee, the Secretary shall refuse to issue a license to the applicant.

(e) If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false

or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in paragraph (b) of this section.

LIABILITY TO PERSON DAMAGED

SEC. 5. (a) If any commission merchant, dealer, or broker violates any provision of paragraph (1), (2), (3), or (4) of section 2 he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

COMPLAINT AND INVESTIGATION

SEC. 6. (a) Any person complaining of any violation of any provision of section 2 by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(b) Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person, may file, in accordance with rules and regulations of the Secretary a complaint of any violation of any provision of section 2 by any commission merchant, dealer, or broker, and may request an investigation of such complaint by the Secretary.

(c) If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the said person is engaged in business; *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of \$500 a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact;

(d) After opportunity for hearing on complaints where the damages claimed exceed the sum of \$500 has been provided or waived and on complaints where damages claimed do not exceed the sum of \$500 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2;

(e) In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail;

REPARATION ORDER

SEC. 7. (a) If after a hearing on a complaint made by any person under section 6 the Secretary determines that the commission merchant, dealer, or broker has violated any provision of paragraph (1), (2), (3), or (4) of section 2, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order.

(b) If any commission merchant, dealer, or broker does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent state of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit;

(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held. Such appeal shall be perfected by the filing of a notice thereof together with a petition in duplicate which shall recite prior proceedings before the Secretary, and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with the clerk of said court with proof of service thereof upon the adverse party. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial *de novo* and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence

of the facts therein stated. Appellee shall not be liable for costs in said court and if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court;

(d) Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment;

SUSPENSION AND REVOCATION OF LICENSE

SEC. 8. (a) Whenever the Secretary determines, as provided in section 6, that any commission merchant, dealer, or broker has violated any of the provisions of section 2, he may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is a flagrant or repeated violation of such provisions, the Secretary may, by order, revoke the license of the offender.

(b) In addition to being subject to the penalties provided by section 3 (a) of this Act, any commission merchant, dealer, or broker, who engages in or operates such business without an unsuspended and unrevoked license from the Secretary, shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without an unsuspended and unrevoked license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license.

ACCOUNTS AND RECORDS

SEC. 9. Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stock-holding or otherwise. If such accounts, records, and memoranda are not so kept, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

EFFECTIVE DATE AND FINALITY OF ORDER

SEC. 10. Any order of the Secretary under this Act other than an order for the payment of money shall take effect within such reasonable time, not less than ten days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, accordingly as it is prescribed in the order, unless such order is suspended, modified, or set aside by the Secretary or is suspended, modified, or set aside by a court of competent jurisdiction. Any such order of the Secretary, if regularly made, shall be final, unless before the date prescribed for its taking effect application is made to a court of competent jurisdiction by the commission merchant, dealer, or broker against whom such order is directed to have such order set aside or its enforcement, operation, or execution suspended or restrained.

INJUNCTIONS

SEC. 11. For the purposes of this Act the provisions of all laws relating to the suspending or restraining of the enforcement, operation, or execution, or the setting aside in whole or in part, of the orders of the Interstate Commerce Commission are made applicable to orders of the Secretary under this Act and to any person subject to the provisions of this Act.

GENERAL PROVISIONS

SEC. 12. The Secretary may report any violation of this Act for which a civil penalty is provided to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. The costs and expenses of such proceedings shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 13. (a) In the investigation of complaints under this Act, the Secretary or his duly authorized agents shall have the right to inspect such accounts, records, and memoranda of any commission merchant, dealer, or broker as may be material for the determination of any such complaint. If any such commission merchant, dealer, or broker refuses to permit such inspection, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender until permission to make such inspection is given.

(b) The Secretary, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under this Act.

(c) In case of disobedience to a subpoena, the Secretary or any of his examiners may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of accounts, records, and memoranda. Any district court of the United States within the jurisdiction of which any hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an

order requiring the person to appear before the Secretary or his examiner or to produce accounts, records, and memoranda if so ordered, or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(d) The Secretary may order testimony to be taken by deposition in any proceeding or investigation or incident to any complaint pending under this Act at any stage thereof. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce accounts, records, and memoranda in the same manner as witnesses may be compelled to appear and testify and produce accounts, records, and memoranda before the Secretary or any of his examiners.

(e) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

(f) No person shall be excused from attending, testifying, answering any lawful inquiry, or deposing, or from producing any documentary evidence, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary or any such officer or employee, in any cause or proceeding, based upon or growing out of any alleged violation of this Act, or upon the taking of any deposition herein provided for, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled under oath so to testify, or produce evidence, documentary or otherwise, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary, or any such officer or employee, or upon the taking of any such deposition, or in any such cause of proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 14. The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies, and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the disbursing clerk of the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That certificates issued by such inspectors shall be received in all courts of the United States and in all proceedings under this Act as prima-facie evidence of the truth of the statements therein contained.

SEC. 15. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 16. In construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer, or broker as that of such agent, officer, or other person.

SEPARABILITY

SEC. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SHORT TITLE

SEC. 18. This Act may be cited as the "Perishable Agricultural Commodities Act, 1930."

Approved, June 10, 1930.

Amended, April 13, 1934.

DEPARTMENTAL INTERPRETATION AND CONSTRUCTION OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT

The purpose of the Perishable Agricultural Commodities Act is to suppress unfair and fraudulent practices in the marketing of fresh fruits and fresh vegetables, whether frozen or packed in ice, in interstate or foreign commerce. Therefore, all of its provisions will be so construed as to make them most effective to this end. It seeks to accomplish this by (1) requiring that commission merchants, dealers, and brokers subject to the act obtain from the Secretary of Agriculture a license for which they must pay an annual fee of \$10; (2) requiring that licensees keep such accounts and records as will show fully and correctly all transactions; (3) prohibiting fraudulent accounting, unjustifiable rejections or failures to deliver, and misrepresentations; and (4) by authorizing the investigation of complaints, the issuance of reparation orders, the publication of facts concerning violations and the suspension or revocation of licenses.

The procedure to be followed by persons subject to license and by the Department in enforcing the act is described in the regulations promulgated by the Secretary of Agriculture. Through the definitions given in the regulations it is possible to determine the views of the Department with respect to many trade practices. For the further guidance of licensees the following additional information is furnished.

ACCOUNTS AND RECORDS

Section 9 of the act requires each licensee to keep such accounts, records, and memoranda as will fully and correctly disclose all transactions involved in his business. Failure to keep such records makes the offender liable to suspension of his license for a period not to exceed 90 days and to publication of the facts. The Department has not prescribed any particular system of records because it recognizes that the records which may be necessary in a large business are entirely too complicated for a small business. In other words, what constitutes adequate records depends upon the size as well as upon the nature of the business. Detailed records to meet the requirements of the act are not confined to lots handled on consignment, as will be shown in paragraph (3-a) below. Furthermore, identified records of detailed sales of purchased produce may prove valuable to a dealer in providing satisfactory evidence in support of his claim for an alleged loss on goods considered to be below the grade specified in a contract of sale. All papers and records of original entries must be retained for a period of at least 2 years after the completion of the transactions to which they relate.

The Department's views as to essential records are outlined as follows:

(1) Bills of lading, diversion orders, paid freight and other bills, car manifests, express receipts, letter and wire correspondence, inspection certificates, accounts of sale, papers relating to loss and/or damage claims against carriers, and all other pertinent papers relating to the shipment, handling, and delivery of each lot of produce, should be preserved and filed. (It is convenient to use jackets, folders, or envelopes, which should be plainly marked in such manner as to identify the lot or shipment of produce to which the papers relate.)

(2) Each licensee should keep in consecutive order a complete record of all produce received, showing the date of arrival and unloading, the car initials and numbers, if any, the number of packages or the quantity received, the name and address of the consignor or seller, and the disposition thereof.

(3-a) Sales tickets or invoices should be issued and copies kept to cover all sales of produce, and are particularly essential when interstate produce is handled for the account of or on behalf of another. They must be kept on sales made for cash as well as on sales made on credit extended by the licensee. If other produce of the same general nature as that being handled on consignment for the account of another has been purchased outright by the licensee and is being sold during the period while the consigned lot is being sold, detailed records of all sales of such purchased produce should be kept on sales

tickets or invoices as well as of the consigned produce. If the consignee commingles the consignor's goods with his own the consignor may claim a quantity of the mass equal to what he consigned. If the goods have been sold the consignee is bound to account to the consignor for the proceeds of the consignment. Only in cases where the licensee handles no produce on consignment for the account of another but confines his business strictly to merchandise purchased by him, or in cases where he handles both purchased and consigned goods but the purchased goods do not come into competition in any respect whatsoever with consigned goods, is the licensee excused from keeping detailed records of sales. Licensees, however, will be held responsible for keeping sufficiently detailed records of any sales which may become involved in complaints filed against them.

(3-b) Lot numbers or other identification marks should be assigned to all lots received to be sold on consignment for the account of another and to all purchased lots of similar produce which are being handled at approximately the same time, as described above. Such lot numbers should be assigned at the time of receipt of the produce and be entered on the sales tickets or invoices by the salesmen at the time of sale. If sales to one customer include produce from more than one lot the proper lot number should be shown opposite each entry. A similar record, showing lot number, should be made of the disposition of any produce condemned by health authorities, lost through resorting, dumped, or returned by purchasers and resold. If any expense is incurred for labor used in reconditioning consigned goods a suitable memorandum should be made at the time the work is performed showing the quantity and kind of produce reconditioned, the amount of time involved and the charge, and identifying the charge by the use of the lot number originally assigned to the produce.

(3-c) Sales tickets or invoices should bear printed serial numbers to make it possible to account for every ticket or invoice. At least one carbon copy of each sales record should be made and kept on file by the licensee, for a period of at least 2 years, either in the order of the serial numbers or of the dates of the sales. They should clearly show the date of sale, the name of the purchaser, the commodity, the lot number, the quantity sold, an appropriate description as to grade, etc., the unit price at which the sale is made, and total amount of the sale. The only exception to the requirement that the names of purchasers shall be shown is in the case of small jobbing or retail lots sold for cash to purchasers who do not require delivery and under circumstances which made it impossible to secure their names. Names of cash purchasers, however, should be recorded on the sales tickets covering any sales of more than a few packages whenever possible.

(4) Licensees whose operations include the furnishing of packages or other supplies, the packing of any produce for or on behalf of another, or the processing, storing, distributing, or selling of such produce, should, in addition to other records, keep such as shall clearly show the character and quantity of the produce received from each consignor, owner, or patron, and the result of all grading and packing operations on each lot with respect to each kind of produce so handled including the cost of materials and the disposition of culls.

(5) In the event of the rejection and return of any produce sold for or on behalf of another, or of any necessary allowance or adjustment being made to the purchaser thereof, a memorandum showing the amount of the credit or adjustment, with reasons therefor, should be made and filed with the corresponding sales record, or a reference should be made upon such sales record indicating that such rejection, return allowance, or adjustment has been made, and showing where the corresponding memorandum is filed. The memorandum referred to should be on a regular credit memorandum form or on a sales ticket or invoice properly filled in to show the facts. This credit memorandum should bear the approval of a responsible member of the licensee and be put through the same channels or record as was the original charge ticket or invoice; otherwise it cannot serve to alter or affect the original sales document. Whether or not the commission merchant had authority from his consignor to grant any allowance or adjustment in price to the purchaser is a matter of proof for which the commission merchant is responsible.

(6) If a licensee knowingly sells or otherwise disposes of any produce, the handling or sale of which is entrusted to him, to any person in whose business such licensee or any stockholder, owner, officer, or salesman thereof, has a financial interest, such licensee should disclose such fact in accounting to the owner or consignor of the produce.

(7) If the licensee should purchase or take title to any portion of produce shipped to him for sale, for or on behalf of another, his records, including the account sales rendered, should show such fact. The consent of the consignor to such purchase or taking of title should always be obtained and filed with the record. If the goods are sold before the account sales is rendered, the accounting should be on the basis of the actual sale price, unless the consignor has consented to other basis of accounting.

(8) No licensee should make any use or disposition of funds in his or its possession or control that will endanger or impair faithful and prompt payment to the owner or consignor of the produce or other person having an interest therein.

It should be borne in mind by brokers that unless their records contain a contract or confirmation of sale signed by the purchaser, or a broker's memorandum, or some other evidence is available that the terms of sale are binding upon the purchaser, then a broker who represents to the seller that a sale has been made at a specified price will be considered to have made a false and misleading statement in violation of the act. Furthermore, brokers, and those who deal through them, should remember that in complaints involving damages in connection with the sale or purchase of produce to or by a licensee, the Department may decline to make an investigation under this act unless the complainant produces evidence that a valid enforceable agreement was made.

When an agent harvests, grades, packs, or processes a product for another, he must make and keep a number of special records not required of other licensees. To determine whether he has correctly discharged his agency contract it may be necessary for his records to show the cost of sorting, grading, packing, or other operations, and of materials. The result of the packing operation on each kind or lot of produce must be shown and the detailed disposition of each kind and grade, often including the culls.

Agency and sales contracts which involve production or packing operations are often elaborate and complicated. In every case the Department will construe the law to mean that the records must be as detailed as the contract and must show that its provisions have been met. Failure to produce such records will be regarded by the Department as cause for the suspension of a license.

Agency or contract transactions involving the import or export of produce may necessitate the keeping of special records in addition to those required in interstate transactions.

With reference to the whole question of records, the Department holds that the law requires that they be adapted to the particular business which the licensee is conducting and that in each case they must fully disclose all his transactions. So many different sorts of contracts are made and such a wide range of services may be performed by agents for others that it is impossible to outline every class of records which may be found essential. The burden is placed by the act on every licensee to determine what he must keep and what he must put on record in order to disclose every essential fact regarding every transaction in his business. Therefore, the foregoing suggestions concerning records are to be considered as indications of what is essential rather than a complete listing of the records needed in any particular case.

COMMISSIONS ON DIFFERENT KINDS OF SALES

A broker or commission merchant may not employ another broker or commission merchant without prior authority from his principal. Additional brokerage or commission charges or other unusual expenses will be regarded as unearned unless proper authority for incurring them is shown. In the absence of an agreement permitting other charges, the usual brokerage or commission will be deemed to have been agreed to. The commission merchant who sells full carloads and who also sells in jobbing or small lots, either from the car or from his store, may properly charge different rates of commission for these differing services. If, however, any goods received for sale on commission are in fact sold in small jobbing or so-called retail lots, the accounting must show these sales at the prices actually received. If the usual commission is based on sales of carloads and no provision has been made for a higher rate of charge on jobbing sales, the usual commission only may be charged on such sales. Any accounting which shows all produce sold at so-called carload prices, when in fact any part was sold at a higher unit price, will be deemed fraudulent.

With regard to the charging of two commissions or two brokerages, it is the position of the Department that this may be done legally only with the knowl-

edge and consent of the shipper. In a given market it is to be presumed that the agent is capable of securing adequate returns for a shipment. If he has to turn goods over to another agent for disposal it does not appear that he has performed a service entitling him to a commission. If the agent feels it wise to forward the shipment to another market, the consent of the shipper should be obtained. Double commission or double brokerage should not be charged unless the shipper consents, and gross receipts and all deductions, including the double commission or double brokerage charges, must be shown on the account sales or other statement rendered. Failure to disclose all the pertinent facts in accounting to the shipper will be deemed failure truly and correctly to account within the meaning of the act.

Selling brokers or distributors will not be considered to have been authorized by growers or shippers to incur additional brokerage or selling charges unless specifically and clearly authorized so to do. In the absence of clear evidence to the contrary, it will be assumed that the original selling charge is to cover the entire cost of selling. Where shipments have actually passed through the hands of more than one broker or selling agent and the accounting rendered by each of them to the other fails to show the actual gross sales and brokerage or selling deductions, or "covers up" the latter, such accounting is manifestly incorrect and in violation of the act. A broker is not considered to be entitled to a brokerage fee unless he effects a sale or makes a valid and binding contract of sale, fully performing his brokerage services. Failure on the part of the seller to make good delivery, however, under a valid contract of sale does not excuse the seller from paying the brokerage otherwise due.

MISLEADING STATEMENTS AND FRAUDULENT CHARGES

If a commission merchant or other agent renders an accounting of sales, when in fact a part or all of the produce was bought by himself or sold to someone in whose business the agent is interested and does not disclose that fact to his principal, the Department will hold that he has rendered a false return because such a sale is voidable at the election of the owner of the produce, who cannot ratify the action unless in possession of all the facts.

Goods may be taken to account to clean up remnants of lots so that returns shall not be unduly delayed, if the owner consents to or ratifies such action. Such goods are really bought by the agent for himself and he cannot legally deduct a commission from the purchase price, unless the owner has consented to, or by acquiescence has ratified, such a charge. "Remnants", in this connection, means small quantities remaining after the bulk of the lot has been sold, and not any considerable part of the lot or shipment.

Therefore any account sales in which commission is charged on goods which were taken to account by the agent or sold to a party in whose business he has an interest, and which fails to show such facts, will be deemed to show a fraudulent charge. The Department believes that when it is necessary to take goods to the account of the agent the correct accounting should show the quantity and kind of goods so taken and the price, with no commission deducted from that item.

As the act was amended on April 13, 1934, *any* fraudulent statement in connection with a transaction falls under this provision of the act which is no longer confined to statements "concerning the condition, quality, quantity, or disposition of, or the condition of the market for, any perishable agricultural commodity which is received in interstate or foreign commerce."

AVERAGING SALES OR RETURNS

A commission merchant or agent who averages the sales of produce from various consignors and remits to each on the basis of an average price has not rendered a correct and truthful account to such consignors unless they have been previously advised of the agent's practice or unless they have signed contracts which specifically grant the agent the right to pool shipments or average returns.

The agent referred to may in some instances be located in the producing section and make shipments to various markets for a number of growers in that district. In other instances the agent may be located at the receiving market and there dispose of the shipments sent him by several growers or shippers. Both such agents are handling goods for the account of others; consequently

they must comply with the provisions of the act as applicable to commission merchants.

If the produce of several growers is pooled at or prior to the time of loading upon a definite understanding and agreement with the growers that the returns will be distributed according to the interest of each in the pool such procedure is not contrary to the accounting provisions of the act.

CONTRACTS OF SALE

It is important that the essential terms of sale be stated in writing in order to meet the requirements of the statute of frauds. This may be done (a) by a confirmation of sale signed by the purchaser and by the vendor or his authorized agent, usually a broker, or by a memorandum of sale signed only by the broker or other authorized agent on behalf of the purchaser, (b) by correspondence which identifies the produce and states the terms of sale, or (c) by telegrams provided the produce is identified and the essential terms of sale are covered. Unless the terms of sale are fully stated in writing, aggrieved parties may find that they not only are not in a position to avail themselves of the benefits of this act in obtaining reparation but that they have left the Department of Agriculture without the necessary evidence to bring successful action against the offender.

The original seventeenth section of the statute of frauds, which is the law in most States, generally as part of the Uniform Sales Act, also provides that such statute may be complied with where "the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment." As the written contract is usually more susceptible to proof than the other provisions above quoted, it is desirable to have a signed contract.

In order to make an enforceable contract it is important that there be a "meeting of the minds", that is, that both parties agree to exactly the same specifications describing the commodity and the same terms of sale. It is also important that descriptive terms be used which have definite generally understood meanings. The use of indefinite terms such as "fancy" (rather than U. S. Fancy), "beautiful", "good color", "good quality", "best", etc., is unsatisfactory since there are no standards for the determination of their meaning. The seller is inclined to undervalue and the buyer to overvalue the meaning of such words.

Brokers and those who deal through them should remember when filing complaints alleging rejection of a commodity or repudiation of a contract that the Department will refuse to entertain the complaint unless the complainant produces evidence that a valid enforceable agreement was made between the parties. In most transactions the broker acts as the agent of both buyer and seller. As indicated above, it is customary in the trade to use one of two types of so-called "confirmation." One of these is called "standard confirmation of sale" and is signed by the buyer and by the broker as agent of the seller. When so signed this becomes the actual contract between the parties. The other type is the "broker's standard memorandum of sale" and is signed by the broker as agent for both the parties. When so signed it becomes valid evidence of the terms of the contract unless immediate objection is made to it by one of the parties. A standard confirmation of sale if signed only by the broker has the same force and effect as a broker's standard memorandum of sale. No matter which type is used it should be prepared in triplicate, one copy going to the buyer, one to the seller, and one being retained by the broker. If the broker issues neither of these papers and has nothing in writing signed by the buyer he should notify the seller that he has only a verbal agreement with the buyer. Furthermore, a broker should not issue either a confirmation or a memorandum of sale until the seller has advised him of his agreement to the exact terms agreed to by the buyer. Statements by the broker indicating that a sale has been made when in fact no enforceable contract has been entered into will subject the broker to a complaint alleging false and misleading statements in violation of the act.

If goods sold f. o. b. shipping point are consigned to the buyer and there is no express understanding between the parties to the contrary, title passes at the point of shipment. If the shipper is able to show that he loaded and shipped goods of the type and quality desired, in suitable shipping condition, he is entitled to receive the purchase price regardless of their condition upon arrival at destination.

The buyer may inspect the produce on arrival even though title passed at shipping point, but this inspection is only for the purpose of determining whether the produce complied with the terms of the contract at time of shipment and whether its condition shows that the produce was not in suitable shipping condition when loaded. In this connection attention is called to the definitions of "f. o. b.", "suitable shipping condition", and other related terms in regulation S. If the buyer and the seller agree that the grade of the goods as shown by a Federal inspection certificate at point of shipment shall be final, then such certificate is conclusive and not subject to impeachment except for fraud or bad faith. If the car is bought on shipping-point-inspection certificate without a definite agreement that such inspection shall be final, then the buyer can ask for an appeal inspection upon arrival of the car and if it develops that the shipping-point inspection was wrong, then the Department will consider the appeal inspection as governing. If the shipper consigns the goods to himself with instructions to notify the buyer, this billing being for the purpose of securing payment of the draft or other performance of the contract by the buyer, and there is no understanding between the parties as to when title shall pass, the produce is considered as shipped at the buyer's risk as in the case of an f. o. b. shipment.

REJECTION OR FAILURE TO DELIVER

One of the things classed by the act as unfair conduct is for a dealer without reasonable cause to reject or to fail to deliver produce in accordance with the terms of the contract. Illustrations of reasonable cause for rejection or failure to deliver produce bought or sold, or contracted to be bought or sold, are a material breach of contract by the other party, an act of God, operation of law, or a condition beyond the control of the party so rejecting or failing.

In an f. o. b. purchase if an official shipping-point-inspection certificate showing the produce to be of the contract grade is reversed at destination it will be considered that the failure of the shipper to comply with the contract was not without reasonable cause, and that the failure of the buyer to accept the car was not a rejection without reasonable cause.

LOSS THROUGH DETERIORATION

Records should show, especially in connection with consignments, the disposition of any quantity of produce which cannot be sold, including quantities lost through resorting, packages returned by purchasers and dumped, and quantities left in the car because of decayed condition. The importance of such a record appears from the fact that discarding or dumping produce by a commission merchant without reasonable cause is one of the unfair practices prohibited by the act.

Reasonable cause for destroying any produce exists when the commodity has no commercial value or when it is dumped by order of a local health officer or other authorized official or when the shipper has consented to such disposition. The term "commercial value" means any value that a commodity may have for any purpose that can be ascertained in the exercise of due diligence without unreasonable expense or loss of time. Proof as to the quantities destroyed or dumped may be provided by procuring a dumping certificate from the local health officer or food inspector or from a Federal farm-products inspector as authorized in the regulations issued under the Produce Agency Act. Any such certificate must properly identify the produce by showing the lot number, date dumped, quantity dumped, name of shipper and name of commission merchant, and the condition of the produce dumped.

PROOF OF FACTS

The burden of proving the facts in a case for decision by the Secretary after complaint has been filed rests upon the party making the allegations. A statement of facts in a complaint does not relieve the complainant of further responsibility in this respect. He must submit proof of all essential facts to substantiate his claim for damages. Likewise the respondent must submit proof of the facts alleged by him in answer to complainant's allegations. If testimony is to be submitted by deposition rather than by personal appearance at a hearing, the other party to the case will be given an opportunity to cross-examine the deponent or submit cross-interrogatories.

In complaints involving amounts under \$500 the act provides that a hearing need not be held and proof of the allegations of the complaint or in support of the respondent's answer may be by depositions or verified statements of fact. The Secretary will decide the case on such verified statements or depositions, with exhibits attached thereto and made a part thereof.

In complaints involving amounts from \$500 to \$2,000, the parties may waive formal hearing. Where such hearing is waived by both parties sworn statements of fact may be filed in support of the complaint or answer and the Secretary will consider such statements, with attached exhibits, depositions, and other records comprising the file in the case in making his decision. If the parties so desire they may submit the case for decision upon the papers previously forwarded to the Department without filing a sworn statement.

When one or both of the parties fail to waive hearing in complaints involving amounts from \$500 to \$2,000, formal hearing will be held in the city where respondent's place of business is located. Testimony may be submitted at such hearing either in person or by deposition. The deposition must be taken on order of the Secretary before a person authorized to administer oaths. Depositions may be in narrative form or by questions and answers. All papers pertinent to the case should be made exhibits thereto. The Secretary will consider the record made at such hearing in deciding the case.

In complaints involving amounts over \$2,000, a formal hearing must be held at the city where the respondent is engaged in business and the parties may present testimony either in person or by deposition. The record made at such hearing will be considered by the Secretary in deciding the case.

FEDERAL INSPECTION SERVICE

The Federal fruit and vegetable inspection service is available for the use of vendors, dealers, commission merchants, or brokers, to determine the quality or condition of produce which may be the subject of dispute. Certificates of inspection by the Government are prima facie evidence in United States courts of the facts stated therein. It is evident that, although not required of interested parties, a Federal certificate of inspection will provide valuable evidence in the event of an investigation under the provisions of this law.